



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE

CALIFORNIA

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Order Instituting Rulemaking to Consider Adoption of
a General Order and Procedures to Implement the
Digital Infrastructure and Video Competition Act of
2006

R.06-10-005

**REQUEST OF THE UTILITY REFORM NETWORK
FOR AN AWARD OF COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION NO. 07-03-014**

May 4, 2007

THE UTILITY REFORM
NETWORK

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**REQUEST OF THE UTILITY REFORM NETWORK
FOR AN AWARD OF COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION NO. 07-03-014**

Pursuant to Section 1801 et seq. of the Public Utilities (PU) Code¹ and Rule 76.71 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this request for an award of compensation in the amount of \$59,472.20 for our substantial contributions to the Commission Decision No. 07-03-014.

Consistent with Section 1804(c), this request for compensation is filed within 60 days of March 5, 2007 the date of issuance (mailing) for D.07-03-014.

TURN has not previously filed a Notice of Intent to Claim Compensation in this docket. There was no prehearing conference in the proceeding, nor was any alternative procedure for filing a Notice of Intent established. Therefore TURN is in this pleading meeting the additional requirements normally addressed in our Notice of Intent.

Section 1804(c) further requires that a compensation request include a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. In the following sections, TURN satisfies these requirements.

I. BACKGROUND AND SUMMARY OF THE CASE

This proceeding was initiated on October 6, 2006 when the Commission adopted an Order Instituting Rulemaking ("OIR") to implement the provisions of the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA").

¹ All code sections refer to the Public Utilities Code.

The OIR raised a number of issues, proposed a general order and sought comments. Numerous parties, including TURN, filed comments and reply comments. A Proposed Decision (“PD”) was issued on January 16, 2006 and an All-Party Meeting was convened by Commissioner Grueneich on February 5, 2007. TURN participated at the All-Party Meeting and also filed comments and reply comments on the PD. A final decision was mailed on March 5, 2007.

II. THE COMMISSION SHOULD FIND TURN ELIGIBLE TO SEEK COMPENSATION

Pursuant to Section 1804(a), TURN makes the following showing of our eligibility to seek compensation in this proceeding.

TURN is a non-profit consumer advocacy organization, with a long history of representing the interests of residential and small commercial customers of California's utility companies before this Commission. TURN's articles of incorporation specifically authorize our representation of the interests of residential customers. Therefore, pursuant to Section 1802(b), TURN is a “customer” as that term is used in the intervenor compensation statutes.²

² In D.98-04-059, the Commission directed intervenors to state in their NOIs which of three customer “categories” they fall within. TURN is a “group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers.” The decision also requires groups such as TURN to include in their NOIs a copy of the authorization in their articles of incorporation to represent residential customers, or to provide a reference to a previous filing. D.98-04-059, p. 30. TURN provided the relevant portion of our articles of incorporation in the NOI submitted in A.98-02-017, and again in A.99-12-024. The articles of incorporation have not changed since the time of those earlier submissions. Finally, D.98-04-059 directs groups such as TURN to indicate the percentage of their members that are residential ratepayers. *Id.*, FOF 12. TURN has approximately 20,000 dues paying members, of whom we believe the vast majority are residential ratepayers. TURN does not poll our members in a manner that would allow a precise breakdown between residential and small business members, so a precise percentage is not available.

Section 1804(a)(2) of the Code sets forth three potential topics that must be addressed in order to establish eligibility for intervenor compensation. The first is a statement of the nature and extent of TURN's planned participation. Section 1804(a)(2)(A)(i). Due to the unusual timing of this Notice of Intent, TURN describes in the following sections the nature and extent of our actual participation. TURN submits that under the circumstances this fully satisfies the requirement of Section 1804(a)(2)(A)(i). Similarly, the detailed description of the amount of compensation TURN requests for our work in the proceeding satisfies the requirement of §1804(a)(2)(A)(ii) for an itemized estimate of the compensation TURN expects to request.

The third requirement is the showing that participation in the hearing or proceeding would pose a significant financial hardship, pursuant to Section 1804(a)(2)(B). TURN is making our showing of significant financial hardship at this time pursuant to Section 1804(b)(1), which states in part that:

A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

TURN received a finding of significant financial hardship in a ruling issued in R.04-04-003 (dated July 27, 2004), and in A.05-02-027 (dated November 4, 2005). TURN's participation in this proceeding commenced within one year of the date of each of those findings, so the rebuttable presumption applies in this case.

III. REQUEST FOR OPPORTUNITY TO SUPPLEMENT IF NEEDED

TURN has made a good faith effort to prepare this request for compensation in a manner that provides the Commission with all of the information necessary to award

compensation to the organization in the amount requested. More specifically, TURN has addressed the matter of finding a “substantial contribution” warranting a full award of compensation, and has allocated its work activities on an issue-specific basis in a manner intended to provide the Commission with the information it needs to fully evaluate this request for compensation. If for any reason the assigned ALJ believes that more information is needed, or that a different approach to such allocation would be preferable to the approach TURN has taken here, TURN requests an opportunity to supplement our request with additional information addressing the identified shortcoming.

TURN makes this request because the Commission has responded in several ways when faced with compensation requests that are perceived to be inadequate or incomplete. Some ALJs have brought the problem areas to the intervenor’s attention and permitted a supplement providing further information to clarify or amplify matters in submitted requests for compensation.³ Others instead opt to address the perceived inadequacy without any further input from the intervenor, requiring them to go so far as to identify different issue areas than those proposed by the intervenor, reallocate the intervenor’s time and expenses among the ALJ-designated issue areas, assume that a lack of detail in support of the claimed lack of duplication necessarily means inappropriate duplication occurred, and otherwise revise the intervenor’s request to better comport with the ALJ’s sense of how the request should have been presented.⁴ TURN submits that it would be a more efficient use of the ALJ

³ See, for example, the Phase 1 and 2 NRF comp request (D.06-08-007 (issued in R.01-09-001), pp. 19-21); and the Phase 3 NRF request (D.06-10-007, pp. 5-6).

⁴ See, for example, the PG&E Diablo Canyon SGRP comp request (D.06-06-057 (issued in A.04-01-009), pp. 6-12); the Edison SONGS SGRP comp request (D.06-07-018 (issued in A.04-02-026), pp. 7-16); and the demand response comp request (D.07-04-010 (issued in A.05-06-006), pp. 6-7 (including making assumptions about

division's scarce resources if, after the need for more information is identified, the intervenor were directed to provide such information, rather than have the ALJ attempt to glean the information from whatever material is before him or her.

TURN further submits that this would be a fairer approach from the perspective of the intervenor requesting the compensation award. An intervenor may well learn of problems with or questions regarding a submitted compensation request only when a draft or proposed decision on that request issues, long after the problems or questions were identified by the ALJ drafting the award and, generally speaking, at a time when there is far more limited opportunity to do anything about the problems or questions other than attempt to mitigate the damage. This seems to be a different (and more stringent) standard than the Commission generally applies to regulated utilities. A utility submitting an application for the Commission's consideration does not face having it rejected with prejudice in whole or in part if the assigned ALJ's initial review suggests that the application is incomplete or inaccurate – the utility will have at least one and perhaps several opportunities to supplement or amend its filing to achieve completeness and accuracy.⁵ There is nothing in the intervenor compensation statute that would suggest, much less mandate, that eligible intervenors should

overlap with other intervenors based on the absence of an “[explanation] how their contributions were complementary rather than duplicative.”)

⁵ As a recent example, consider the PG&E Catastrophic Emergency Memorandum Account (CEMA) application, A.06-11-005. When the utility first apprised the Commission of its intent to seek CEMA treatment of certain costs, the agency's Executive Director responded with a cautionary note – it did not appear that the conditions met the standards set out in the utility's tariffs. (Proposed Decision of ALJ Long, April 24, 2007, p. 7). A few months later, PG&E filed its application. At the initial prehearing conference convened on January 4, 2007, the assigned ALJ alerted the company that the application was unclear on the basis for the requested relief. PG&E was permitted to attempt clarification at the PHC, then again in further briefing at a later date. (PD, pp. 7-8) Whether measured as the \$44.6 million of electric distribution and generation revenue requirements for 2005-2010 or the \$61.96 million of total costs the utility claims to have incurred (PD, p. 8), the amount at stake for the utility was a very small percentage (approximately 1.1 to 1.6%) of the utility's authorized revenue requirement for those operations. (The recent 2007 GRC decision adopted a revenue requirement of \$3.88 billion – D.07-03-044, p. 10.) Using a rough estimate of TURN's annual budget of \$2.5 million, 1.6% of that figure would amount to approximately \$40,000.

not be afforded similar opportunities with regard to any request for compensation deemed incomplete or inadequately supported.

IV. SUBSTANTIAL CONTRIBUTION

A. The Commission's Standards for Substantial Contribution

Section 1803 directs the Commission to award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding where two requirements are satisfied. TURN met the first requirement (significant financial hardship) in the portions of this request that set forth the showing normally set forth in a separate Notice of Intent to Claim Compensation. The second requirement is that the customer demonstrate that its "presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision."

Section 1802(i) of the PU Code defines "substantial contribution" as follows:

'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts the customer's contention or recommendation only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Elaborating on this statutory standard, the Commission has stated:

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or

procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision, even if the Commission does not adopt a party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected. (D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4).

The Commission has interpreted the Section 1802(i) definition, in conjunction with Section 1801.3, so as to effectuate the legislature's intent to encourage effective and efficient intervenor participation. The Commission has granted compensation where a party's participation contributed to the decision-making process or its showing assisted the Commission in its analysis of an issue, even if the intervenor's specific recommendations were not adopted.⁶ Similarly, the Commission has awarded compensation for an intervenor's work in opposition to a settlement, even where the final decision approved the settlement without any modification based on the intervenor's objections. The agency has in such cases recognized the appropriateness of awarding full compensation in recognition of the intervenor's efforts having raised and addressed issues and developed the record in such a way as to increase the Commission's certainty and confidence that its decision was the correct one.⁷

A finding of substantial contribution warranting full compensation is appropriate here, even though the final decision largely adopts outcomes other than those advocated by TURN. The issues TURN focused on were all issues raised by the Commission in its OIR and were

⁶ D.98-11-014, p. 8 ("TURN contributed to D.97-08-055 by raising this issue and developing the record on the implications of this conflict."), *see also* D.04-12-010, where the Commission awarded compensation for all of the requested hours even though it had not adopted TURN's recommendations on the central issues in the proceeding (in A.99-04-024).

⁷ D.00-07-015 (awarding intervenor compensation to Aglet Consumer Alliance in A.98-09-003, *et al.*), pp. 5-6; *see also* D.00-02-008, pp. 4-7, 10 (in Edison OOR A.97-06-021), where the Commission awarded TURN the full amount of hours claimed even though our substantial contribution was made in the course of unsuccessfully opposing adoption of a settlement agreement.

all critically important to the Commission's evaluation of the proposals under review. These issues included: the scope of the Commission's authority under DIVCA; determination of the details of the franchise process and whether protests of franchise applications would be permitted; how the Commission would enforce the DIVCA build-out requirements and mandates prohibiting discrimination and cross-subsidization; the kind of reporting requirements the Commission would require as well as the extent of the Commission's investigative authority and appropriate role of the Division of Ratepayer Advocates ("DRA"); and whether the Commission has the statutory authority to grant intervenor compensation in the video services context. These issues were crucial to TURN's constituents and to all consumers in California. Under the circumstances here, the Commission should find TURN's efforts constituted a substantial contribution warranting compensation for all of TURN's reasonable efforts addressing those issues.

B. TURN's Substantial Contribution to D. 07-03-014

TURN's participation in this proceeding was primarily aimed at ensuring that consumers not only received the competitive benefits that DIVCA was intended to produce, but also were afforded the protections against discrimination and cross-subsidization that DIVCA mandated. Consistent with those goals, TURN also advocated for Commission processes relating to video services that would protect consumer interests such as the right to protest video franchise applications, detailed Commission monitoring of video franchisees and the ability of intervenors to be compensated for participation in Commission proceedings pertaining to video services. While TURN did not achieve all the results we advocated, the Commission ultimately did agree with some of TURN's positions.

TURN's substantial contribution to the final decision is evident in several regards. In responding to the OIR's proposed rules, TURN argued that the Commission had failed to provide specific details relating to how the Commission was going to enforce DIVCA's build-out requirements and anti-discrimination and cross-subsidization provisions⁸. Responding to TURN and other parties, the Commission significantly revised the PD to include in the final Decision substantial details on the enforcement of the build-out and anti-discrimination requirements.⁹

Another important issue in this proceeding was the determination of the reporting requirements that would be imposed on franchise applicants and on franchisees once a franchise was granted. These reporting requirements included issues relating to type and scope of information, granularity and frequency of information. The prospective franchisees contended that the Commission's authority was constrained by DIVCA and thus the agency could only demand limited information. In contrast, TURN argued that DIVCA conferred broader authority and supported more detailed reporting requirements both in the application process as well as once an applicant was granted a franchise. In general, the Commission agreed with TURN. Thus, for example, the Commission agreed with TURN and the DRA that DIVCA authorized the Commission to impose additional reporting requirements.¹⁰ Further, the Decision noted TURN's position supporting the Commission's proposal relating to the collection of socioeconomic data.¹¹

⁸ TURN Reply Comments, pp. 5-6; TURN Comments on PD, p. 3.

⁹ See D.07-03-014, p. 155 and pp. 178-181 including citing TURN at p. 179.

¹⁰ D.07-03-014, p. 152 footnote 566.

¹¹ D.07-03-014, p. 52.

In its Comments, TURN had also urged the Commission to require that community centers offering video services pursuant to DIVCA make these centers accessible to people with disabilities.¹² While the Commission held that it could not “require disability accessibility,” the Decision did note that “we nonetheless find that the request for this accessibility is laudable. We expect that community center operators will do their best to make their facilities accessible to the disability community.”¹³

TURN had also opposed arguments presented by AT&T and the cable interests that, under DIVCA, the Commission’s investigatory authority is limited to claims of discrimination or denial of access. TURN argued that the Commission’s authority was much broader, permitting the Commission to open investigations into all areas covered by DIVCA, and especially where issues relating to cross-subsidization are implicated.¹⁴ While the Commission fully agreed with neither party, the Decision did adopt a position more consistent with that advocated by TURN, holding “the Commission only may initiate investigations regarding franchising; antidiscrimination and build-out; reporting; annual user fees; and the prohibition on the use of rate increases for stand-alone, residential, primary line, basic telephone services to finance video deployment.”¹⁵

Finally, TURN, as did several other parties, opposed the inclusion in the PD of provisions restricting the role of DRA, especially the ability of DRA to receive access to

¹² TURN Comments, pp. 16-17.

¹³ D.07-03-014, footnote 607.

¹⁴ TURN Reply Comments, p. 9.

¹⁵ D.07-03-014, p. 175 (footnote omitted).

video information filed with the Commission.¹⁶ The Decision revised these provisions consistent with the position advocated by TURN.¹⁷

TURN also presented arguments supporting the right to protest franchise applications, the need for specific provisions for the Commission to ensure against cross-subsidization and the right of parties to seek intervenor compensation in proceedings on video services. Although the final Decision did not agree with TURN's positions on these issues, we respectfully submit that our arguments were competently argued and afforded the Commission the opportunity to more fully examine all aspects of the issues under review.

It is clear from the Decision that the Commission agreed with TURN on some important points, but not on several others. Even in the face of this mixed track record the Commission should find that TURN made a substantial contribution to this proceeding that warrants an award of intervenor compensation for all of the associated costs and expenses. This DIVCA rulemaking shares characteristics with the Advanced Telecommunications Deployment rulemaking (R.03-04-003). In its discussion of TURN's substantial contribution in that proceeding, the Commission stated

We agree that TURN made a substantial contribution in this proceeding. In this proceeding especially, we solicited the input of many parties and members of various user communities, and value TURN's expertise in this area. We wish to continue to encourage thoughtful participation even where specific recommendations were not adopted.... Finally, this rulemaking exemplifies the kind of proceeding where, because of the novelty, importance, and complexity of the policy issues addressed, an intervenor may substantially contribute by assisting the Commission to develop a comprehensive record, even though the Commission's decision

¹⁶ TURN Comments on PD, p. 10.

¹⁷ D.07-03-014, p. 200.

may not have adopted the intervenor's specific recommendations on those issues.¹⁸

The Commission found TURN made a substantial contribution in that proceeding that warranted an award for all hours included in the request for compensation. TURN submits that the same outcome is warranted here.

III. OVERALL BENEFITS OF PARTICIPATION AND LACK OF DUPLICATION

A. TURN's Participation was Productive

In D.98-04-059, the Commission directed intervenors filing compensation requests to attempt to "monetize" the benefits accruing to ratepayers as a result of the intervenor's participation. The Commission stated that such an assessment would ensure that: 1) ratepayers receive value from compensated intervention; and 2) only reasonable costs are compensated. D.98-04-059, p. 73. The Commission noted that assigning a dollar value to intangible benefits may be difficult.

Because this proceeding was focused on implementing specific statutory requirements and development of an entirely new process for video franchisees, it is difficult to assess the precise monetary benefits to ratepayers. However, TURN provided a valuable counterpoint to those participants who argued that the Commission's role under DIVCA was purely ministerial and sole function was to rubber-stamp the franchise applications of the incumbent local exchange carriers ("ILECs"). In addition, TURN raised significant issues that permitted the Commission to have a full record for its deliberations. The Commission should conclude that TURN's participation was "productive" because of the increased certainty and confidence

¹⁸ D.06-04-036, p. 10,

that the Commission has in its final product thanks to the issues raised by TURN and the organization's efforts in developing a fuller record.¹⁹ Therefore, the Commission should find that TURN met the productivity requirement under the circumstances here.

B. No Reduction Due To Duplication Is Warranted

TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. The intervenor statutes allow the Commission to award full compensation even where a party's participation has overlapped in part with the showings made by other parties. PU Code §1802.5.

While there were other intervenors that represented consumers in this proceeding, TURN provided independent and often unique analysis and recommendations that did not overlap with the proposals of other parties. For example, TURN was the only intervenor that submitted an analysis of FCC Part 64 cost allocations questioning whether Commission reliance on the FCC data, including ARMIS reporting, is sufficient to enable effective monitoring of cross-subsidization.²⁰ Furthermore, while several parties filed pleadings supporting the availability of intervenor compensation in the video context, TURN submits that its submissions were the most detailed and researched. Thus, TURN submits that our efforts served to supplement and complement the showing of the other consumer representatives. Further, TURN worked diligently to coordinate with other consumer parties whenever possible to avoid duplication. For example, TURN met with several intervenors to discuss strategies and positions with the intent to develop supporting rather than duplicating

¹⁹ D.00-07-015, pp. 5-6.

²⁰ TURN Comments, pp. 9-16.

pleadings. Finally, the Commission has specifically disavowed the appropriateness of imposing a duplication penalty for a party who makes a substantial contribution. (D.03-03-031, *upheld on rehearing* D.04-07-039.)

IV. ITEMIZATION OF SERVICES AND EXPENDITURES

A. Summary

In this filing, TURN is requesting compensation for all of the time that we reasonably devoted to this proceeding, as well as the full amount of expenses we incurred for our participation. The following is a summary of TURN's requested compensation. A more detailed breakdown of the time devoted to this proceeding by TURN's representatives is provided in the appendices to this filing

Attorney/Advocate Fees				
	Year	Hours	Rates	
William Nusbaum	2006	58.25	\$375.00	\$21,843.75
	2007	61	\$405.00	\$24,705.00
Comp	2007	10	\$202.50	\$2025.00
Regina Costa	2006	22.50	\$235.00	\$5,287.50
	2007	9.25	\$255.00	\$2,358.75
Christine Mailloux	2006	7.50	\$335.00	\$2,512.50
Robert Finkelstein	2007	1.75	\$405.00	\$708.75
			Subtotal	\$59,441.25
Other Reasonable Costs				
Photocopying				\$19.20
Lexis				\$6.92
Phone				\$4.83
			subtotal	\$30.95
			TOTAL	\$59,472.20

B. The Hours Claimed for TURN's Attorneys and Consultants Are Reasonable

Appendix A sets forth a daily listing of the specific tasks performed by our staff attorneys William Nusbaum, Christine Mailloux, Robert Finkelstein, and our Telecommunications Research Director Regina Costa. TURN's staff members all maintained

detailed contemporaneous time records indicating the number of hours devoted to this case. In preparing this appendix, the responsible advocates reviewed all of the recorded hours devoted to this proceeding and included only those that were reasonable for the underlying task. As a result, TURN submits that all of the hours included in the appendix are reasonable, and should be compensated in full.

Mr. Nusbaum was lead attorney for this proceeding and received support from TURN's Telecommunications Director Ms. Costa. This proceeding raised complex policy issues that could have significant implications for all California consumers and therefore required careful analysis. In light of the complexity, TURN's submits that Mr. Nusbaum's 119.25 hours is reasonable.²¹ Similarly, Ms. Costa's work in this proceeding, amounting to the equivalent of less than one 40-hour work week, is also reasonable. Ms. Mailloux's and Mr. Finkelstein's work entailed participating in the development of TURN's strategy for the proceeding and reviewing drafts of the pleading. TURN submits that the work of various TURN staff was focused and efficient and should be compensated in full.

C. TURN's Proposed Allocation By Issue Is Reasonable and Fair

TURN has segregated our attorney and consultant time by issue or activity where feasible, in accordance with the guidelines adopted in D.85-08-012. Of course, such allocation by issue or activity does not necessarily mean the award of compensation will vary by issue or activity. As discussed more fully above, the plain language of the intervenor compensation statute provides that full compensation may be warranted even where less than

²¹ TURN's hours devoted to filing an application for rehearing have not been included.

full success is achieved by the intervenor.²² And the Commission has often awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope.²³ The following discussion describes TURN's allocation of work activities in this proceeding.

D.85-08-012 specified three different categories of work activities that allow for differing degrees of issue-by-issue allocation. The first category was described as follows:

1)Allocation by Issue is Straightforward. Testimony [and] briefs . . . are usually organized on the basis of issues, and thus it seems relatively easy for intervenors to keep track of the time spent writing on each issue.

TURN has identified four major issue categories for purposes of allocating hours: issues pertaining to DIVCA consumer protections, including cross-subsidization, anti-discrimination and build-out requirements (the entries designated "CP" in Appendix A); issues pertaining to the right to protest franchise applications (the entries designated "P" in Appendix A); issues relating to reporting requirements including the Commission's authority to institute investigations and the role of DRA (the entries designated "R" in Appendix A); and the issue of whether intervenor compensation would be made available in the video context (the entries designated "IC" in Appendix A)

For some of the entries, TURN's work covered a number of issue categories but is not easily allocated to the specific issue category. For such entries (marked with "#" in the

²² Section 1802(h) and Section 1803.

²³ For example, in D.98-04-028, the Commission awarded TURN full compensation for **all** of the time we devoted to both phases of the CTC proceeding, even though TURN did not prevail on all of the issues that we raised in the case. The Commission applied the same principle in the compensation decision in the SoCal Gas PBR proceeding (A.95-06-002), finding the hours for which TURN sought compensation reasonable despite the fact that we did not prevail on every issue we addressed in that proceeding. D.98-08-016, pp. 6, 12. Previously, the Commission appropriately awarded TURN the full amount of hours claimed even though our substantial contribution was made in the course of unsuccessfully opposing adoption of a settlement agreement. D.00-02-008, pp. 4-7, 10 (Edison OOR A. 97-06-021)

appendix), TURN proposes the following as a reasonable approach to achieving a rough allocation among the various issues: 30% “CP” (DIVCA consumer protections), 25% “P” (protests); 25% “R” (reporting/investigatory authority; and 20% “IC” (intervenor compensation).

2) Allocation by Issue is Almost Impossible.

When initially preparing to participate in a case, offset or otherwise, it is often simply impossible to segregate hours by issue, because this is the stage where an intervenor is learning about the case and preliminarily identifying the issues and how they interrelate. Thus we see no reason to require a strict allocation of initial general preparation time. If in our opinion an intervenor makes a substantial contribution on all or most of the issues it addresses, or if we determine that the significance of the issues on which the intervenor prevails justifies full compensation even though there hasn't been strict allocation (D.85-02-027), the intervenor should receive compensation for all of its initial preparation time. If the intervenor is less successful, in our judgment, initial preparation time may be compensated on a pro- rata basis, according to the proportion of successful issues to total issues addressed. (Id. at 15.)

Some work is fundamental to active participation in a Commission proceeding, and is not allocable by issue. TURN's general initial preparation time (while it may vary along with the scope of the case) can cover our review of an even wider range of issues than we ultimately addressed; such review work cannot be broken down by issue. Similarly, some tasks are fundamental to active participation and the amount of time they require does not vary by the number of issues upon which TURN participated (or prevailed). Examples of these tasks include: reviewing other parties' testimony and filings, and the draft or alternate decision; and attending prehearing conferences and ex parte meetings. TURN has endeavored to comply with this guideline by classifying our unallocable general preparation time as “GP” representing general participation time that is not allocable by issue.

TURN also seeks compensation at half the usual hourly rate for the hours devoted to the preparation of TURN's NOI and this compensation request (designated as "Comp" in the appendix). This reduction is consistent with the Commission's practice of generally treating compensation requests as a pleading not requiring an attorney's drafting efforts.

The third category of activities described in D.85-08-012 covers hearing time that may be difficult to allocate. Since there were no evidentiary hearings in this case, TURN did not apply this category.

In conclusion, TURN has proposed a reasonable means of complying with the Commission's guidelines on allocation of time. TURN submits that all of the hours claimed were reasonably and efficiently expended and should be fully compensated.

D. The Hourly Rates Requested for TURN's Attorneys and Expert Witness Are Reasonable and Should Be Adopted

As discussed below, TURN is seeking hourly rates for our advocates for 2006 based on rates already approved by the Commission. For 2007 rates, TURN is seeking the 3% "cost of living adjustment" approved in D.07-01-009, plus a 5% "step increase" for advocates within the established experience ranges, consistent with D.07-01-009 (the decision in the 2006 hourly rate proceeding R.06-08-019. TURN is not presenting specific information regarding our attorneys' training and experience in order to justify the requested hourly rates. We understand that such information is unnecessary where, as here, we are seeking already-approved rates for work performed in 2006, and the expected escalation for 2007 hours.²⁴

²⁴ Should the Commission determine that such a showing is necessary for any of the attorney rates included here, it should provide an opportunity to supplement the compensation request to present such information.

a) William Nusbaum

TURN requests an hourly rate of \$375 for work performed by Mr. Nusbaum in 2006, the rate the Commission approved for his work in 2006 in D.06-11-009 (in R.00-02-004). This is the first request for compensation that includes a substantial amount of Mr. Nusbaum's time in 2007. TURN requests an 8% increase for work performed in 2007, consisting of the 3% "cost of living adjustment" for 2007 and a 5% "step increase," both of which are provided for in D.07-01-009. This increase yields an hourly rate of \$405 when rounded to the nearest \$5 increment.

b) Regina Costa

TURN requests an hourly rate of \$235 for the work performed by Ms. Costa in 2006, the rate the Commission approved for her work for in 2006 in D.07-04-032 (in R.05-09-006). This is the first request for compensation that includes a substantial amount of Ms. Costa's time in 2007. TURN requests an 8% increase for work performed in 2007, consisting of the 3% "cost of living adjustment" for 2007 and a 5% "step increase," both of which are provided for in D.07-01-009. This increase yields an hourly rate of \$255 when rounded to the nearest \$5 increment.

c) Christine Mailloux

TURN requests an hourly rate of \$335 for the work performed by Ms. Mailloux in 2006, the rate the Commission approved by for her work in 2006 in D.06-11-009 (in R.00-02-004).

d) Robert Finkelstein

TURN requests an hourly rate of \$405 for the work performed by Mr. Finkelstein in 2007 in this proceeding. This is the same rate the Commission has found reasonable for his work in 2006 (D.06-10-018 in A.04-12-014). Due to his limited involvement in this proceeding, TURN seeks compensation using the 2006 rate. However, TURN reserves the right to seek a higher rate for Mr. Finkelstein's 2007 work in a future compensation request.

E. TURN's Expenses Are Reasonable And Should Be Compensated In Full

The miscellaneous expenses of \$30.95 listed in the summary presented above are reasonable in magnitude and were necessary for TURN's contribution to this case. They consist primarily of photocopying that relate exclusively to the preparation and distribution of comments and other pleadings. TURN's expenses also include computerized legal research costs incurred for our work in this proceeding, as well as a small amount of telephone costs. TURN's costs are all reasonable, and should be compensated in full.

V. CONCLUSION

Based on the information submitted above, TURN has met all of the requirements of Section 1801 et seq. of the PU Code and the Commission's intervenor compensation decisions, and therefore requests an award of compensation in the amount of \$59,472.20 plus interest if a decision is not issued within 75 days of today, in accordance with Section 1804(e) of the PU Code.

May 4, 2007

Respectfully submitted,

/S/

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VERIFICATION

I, William R. Nusbaum, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the behalf of TURN. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 4, 2007 at San Francisco, California.

/S/

William R. Nusbaum
Senior Telecommunications Attorney

APPENDIX A

TURN STAFF ADVOCATE HOURS AND EXPENSES

IN R.06-10-005

Intervenor Compensation Claim Summary

Contribution Decision(s):	D. 07-03-014
Proceeding(s):	R.06-10-005
Intervenor:	The Utility Reform Network (TURN)
Claim Date:	May 4, 2007
Total Amount of Claim:	\$59,472.20

Advocate Information

First Name	Last Name	Type	Hourly Fee Requested	Year	Relevant Education or Degree/ Year Attained/ Experience
William	Nusbaum	(1)	\$375* \$405	2006 2007	J.D. 1976, 25+ years experience in telecommunications industry, joined TURN's staff in 2003
Regina	Costa	(3)	\$235* \$255	2006 2007	Advanced degree in telecommunication studies, twenty years experience in the industry, 15+ years with TURN
Christine	Mailloux	(1)	\$335*	2006	J.D. 1993, prior experience with telecommunications issues; joined TURN's staff in 2001
Robert	Finkelstein	(1)	\$405*	2007 (using 2006 rate)	J.D. 1985, 15 years CPUC experience

* = Rate previously approved by the CPUC for work in 2006.

Date	Attorney	Activity	Description	Time Spent
<u>Attorney: BF</u>				
1/26/2007	BF	#	Mtg w/DRA	1.75
Total: BF				1.75
<u>Attorney: BN</u>				
10/12/2006	BN	GP	Read/analyze OIR	2.75
10/18/2006	BN	#	TURN strategy mtg for comments	1.00
10/19/2006	BN	#	Issues analysis for comments	4.50
10/20/2006	BN	CP	Conf call TR/RC/BN re cross-subsidy issue	0.50
10/23/2006	BN	P	Drafting comments	7.50
10/24/2006	BN	R	Drafting comments	4.50
10/25/2006	BN	IC	Drafting comments	3.25
10/26/2006	BN	GP	Analyze parties' comments for reply	8.50
10/27/2006	BN	P	Drafting reply comments	6.50
10/30/2006	BN	CP	Drafting reply comments	5.75
10/31/2006	BN	IC	Drafting reply comments	8.25
11/1/2006	BN	R	Drafting reply comments	3.50
11/2/2006	BN	GP	Review parties' reply comments	1.75
1/22/2007	BN	GP	Analysis PD	3.75
1/23/2007	BN	GP	Analysis PD	4.75
1/24/2007	BN	GP	Analysis PD	4.25
1/25/2007	BN	GP	Analysis PD	3.50
1/26/2007	BN	GP	Analysis PD	4.25
1/26/2007	BN	#	Meeting w/DRA	1.75
1/29/2007	BN	GP	Analysis for statement for Grueneich all-party mtg	3.25
1/30/2007	BN	GP	Drafting statement for Grueneich all-party mtg	3.50
1/31/2007	BN	P	Drafting comments on PD	2.75
2/1/2007	BN	R	Drafting comments on PD	3.75
2/3/2007	BN	CP	Drafting comments on PD	6.25
2/5/2007	BN	IC	Drafting comments on PD	3.00
2/5/2007	BN	GP	Attending Comm. Grueneich All-Party	1.00
2/7/2007	BN	GP	Review/analysis parties PD comments	4.50
2/8/2007	BN	#	Drafting reply comments on PD	6.50
2/8/2007	BN	GP	Review/analysis parties PD comments	2.50
2/12/2007	BN	#	Revisions to draft reply commenst on PD	1.75
4/24/2007	BN	Comp	Prepare comp request	4.00
4/25/2007	BN	Comp	Prepare comp request	6.00
Total: BN				129.25
<u>Attorney: CM</u>				
10/12/2006	CM	GP	Review OIR re: video franchising	0.25
10/13/2006	CM	#	DW B. Nusbaum re: OIR and strategy	0.25
10/18/2006	CM	#	DW B. Finkelstein re: comments; read statute and OIR; CC with telecom staff re: strategy	2.50
10/19/2006	CM	GP	Review BN outline; add comments; review OIR and draft GO; DW BN	1.75
10/24/2006	CM	GP	Review draft of opening comments on OIR; make edits; DW B. Nusbaum re: same	2.00
10/25/2006	CM	GP	Review revised draft; DW B. Nusbaum re: edits; R/R parties opening comments	0.75

Date	Attorney	Activity	Description	Time Spent
Total: CM				7.50
<u>Attorney: RC</u>				
10/23/2006	RC	CP	edit op comments section re cross subsidy	0.75
10/23/2006	RC	CP	write op comments re cross subsidy	5.00
10/24/2006	RC	GP	review revised draft comments, review e-mails re same	0.50
10/25/2006	RC	GP	Review op comments, prep for reply	1.25
10/25/2006	RC	GP	Review revised opening comments	0.50
10/26/2006	RC	GP	Review opening comments, prep for reply	5.25
10/27/2006	RC	GP	Review op comments, prep for reply	5.25
11/1/2006	RC	CP	Write intro, review and edit reply comments	2.00
11/2/2006	RC	GP	Review reply comments, AT&T, Verizon	1.00
11/2/2006	RC	GP	Review reply comments, cities	1.00
1/23/2007	RC	#	MW BF, CM, BN to discuss reply comments	0.25
1/25/2007	RC	CP	MW DRA to discuss cross subsidy issue as addressed in PD, prep for comments	0.75
1/26/2007	RC	#	Review analysis of PD prepared by BN, outline for op comments	0.75
1/26/2007	RC	CP	MW BN to discuss how to address cross subsidy issue in op comments on PD	0.50
1/29/2007	RC	CP	Review PD re CBG tracking, review analysis from TR re same, TW BN re same	0.75
1/31/2007	RC	GP	Review, send comments to BN re statement for all party meeting	0.50
2/4/2007	RC	CP	Review draft of comments, cross subsidy issue, suggest edits	0.50
2/5/2007	RC	GP	Review final draft of comments, check for typos, needed edits	0.50
2/5/2007	RC	CP	Review revised cross subsidy section	0.25
2/8/2007	RC	#	Review preliminary draft of reply comments, TW BN re suggested arguments, edits	0.75
2/8/2007	RC	GP	Review op comments, make notes on issues for reply	2.25
2/12/2007	RC	GP	Review and edit draft reply comments	0.25
2/14/2007	RC	GP	Review Reply Comments	1.25
Total: RC				31.75
Grand Total				170.25

5/4/2007
10:05 AM

Expenses.

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Date	Activity	Description	Billed
<u>Activity: Lexis Nexis</u>			
1/31/2007	Lexis Nexis	Lexis Nexis Research	\$6.92
Total: Lexis Nexis			\$6.92
<u>Activity: Phone/Fax</u>			
11/15/2006	Phone/Fax	Sprint Bill (case calls)	\$1.67
1/15/2007	Phone/Fax	Sprint Invoice; \$0.19	\$0.19
2/15/2007	Phone/Fax	Sprint Invoice; \$2.97	\$2.97
Total: Phone/Fax			\$4.83
<u>Activity: Photocopies</u>			
11/1/2006	Photocopies	Reply Comments; 22 pgs x 2 cc	\$8.80
2/5/2007	Photocopies	TURN Comments On PD; 20 pgs x 2 cc	\$8.00
2/13/2007	Photocopies	TURN's Reply Comments; 6 pgs x 2 cc	\$2.40
Total: Photocopies			\$19.20
Grand Total			\$30.95

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On May 4, 2007 I served the attached:

**REQUEST OF THE UTILITY REFORM NETWORK
FOR AN AWARD OF COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISION NO. 07-03-014**

on all eligible parties on the attached lists to **R.06.10.005**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this May 4, 2007, at San Francisco, California.

_____/S/_____

Larry Wong

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: R0610005 - CPUC - CABLE TELEVIS

Filer: CPUC - CABLE TELEVISION

List Name: INITIALLIST

Last changed: April 27, 2007

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